

**Second Further Amended Statement of claim**

No. VID 891 of 2023

Federal Court of Australia

District Registry: Victoria

Division: General

**Lisa Gay Simpson ~~Rebecca Lee Gatt~~**

Applicant

**Taylors Business Pty Ltd (ACN 107 445 723)**

Respondent

**A. PRELIMINARY**

1. ~~The Applicant (**Ms Gatt**) brings this proceeding on her own behalf and on behalf of represented persons pursuant to Part IVA of the *Federal Court of Australia Act 1976* (Cth), being natural persons (**Group Members**) who entered into one or more contracts styled as 'pawn contracts' with the Respondent (**Taylors**) between 15 November 2022 and the time of filing (**Pawn Contracts**).~~

**A.1. The parties**

2. The Applicant (~~**Ms Gatt**~~) is a natural person and a resident in Victoria.

3. The Respondent (**Taylors**):

- a. is and was at all material times incorporated pursuant to the *Corporations Act 2001* (Cth) and capable of being sued;

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Filed on behalf of (name & role of party) The Applicant ~~Rebecca Lee Gatt~~  
Prepared by (name of person/lawyer) Galit Aflalo, Lawyer  
Law firm (if applicable) Consumer Action Law Centre  
Tel (03) 9670 5088 Fax Not applicable  
Email Nhirushni@consumeraction.org.au  
**Address for service** Level 6, 179 Queen Street, Melbourne VIC 3000  
(include state and postcode)

- b. was, at all times between 15 November 2022 up to around July 2023, carrying on business as a second-hand dealer and pawnbroker from premises at 191 Kings Road, Delahey in the State of Victoria (**Taylors Store**).

## A.2. Representative proceeding

4. The Applicant ~~Ms Gatt~~ brings this proceeding pursuant to Part IVA of the *Federal Court of Australia Act 1976* (Cth) on behalf of all persons who entered into one or more contracts styled as 'pawn contracts' (**Pawn Contracts**) with Taylors on or from 15 November 2022 to the commencement of this proceeding (**Group Members** **Pawn Contracts**).
5. As at the commencement of this proceeding, there are at least seven Group Members.

## B. CONTRACT

### B.1. The Pawn Contracts

6. The Pawn Contracts are agreements between Taylors and the Applicant ~~Ms Gatt~~ and the Group Members under which Taylors agreed to loan an amount of money (**Loan Amount**) to the Applicant ~~Ms Gatt~~ or the Group Member (as the case may be) in exchange for the pawning of one or more goods (**Pawned Goods**).

#### Particulars

The Applicant entered into the following Pawn Contracts: ~~Ms Gatt entered into the following Pawn Contracts on 24 July 2023:~~

- (a) the written contract numbered TPL2224077 and dated 17 May 2023 under which Taylors provided the Applicant with \$140 in exchange for pawning goods described by Taylors as: entitled 'TBL2224652 — PAWN CONTRACT 2023002782' under which Taylors lent \$375 in exchange for ~~Ms Gatt~~ pawning:

i. 'MOTOROLA ANDROID MOBILE PHONE 128GB BLUE (ACCS: BOX, CASE, USB CABLE) MOTO G31'; S/N:ZY22F2K9X2 — 'UNISEX 9CT YELLOW GOLD NECKLACE 0.6GMS STAMPED 375 — DENSITY TESTED 0K YELLOW GOLD NECKLACE 0.56G TESTED';

ii. 'FFALCON TELEVISION 40SF1'; 'UNISEX 9CT YELLOW GOLD BRACELET 11.7GMS STAMPED 375 —

~~DENSITY TESTED 9K YELLOW GOLD BRACELET  
11.74G TESTED';~~

iii. ~~'FUSE POWER BANK CLR'; 'MENS 9CT YELLOW  
GOLD RING 3.0GMS STAMPED 375 9K YELLOW GOLD  
RING W/ 1 WHITE STONE 3.04G TESTED'; and~~

iv. ~~'KEJI POWER BANK 5000MAH POWERBANK  
BL' 'LADIES 18CT YELLOW GOLD NECKLACE 3.5GMS  
18K YELLOW GOLD NECKLACE 3.5G TESTED';~~

(b) the written contract numbered TPL2224115 and dated 21  
May 2023 under which Taylors provided the Applicant with  
\$100 in exchange for pawning a 'RYOBI WHIPPER  
SNIPPER RLT254CDSO' as described by Taylors. entitled  
~~'TBL2224653 PAWN CONTRACT 2023002783' under  
which Taylors lent a further \$375 in exchange for Ms Gatt  
pawning;~~

i. ~~'UNISEX 9CT YELLOW GOLD NECKLACE 25.1GMS  
STAMPED 375 DENISTY [sic] TESTED 9K YELLOW  
GOLD NECKLACE 25.07G TESTED'; and~~

ii. ~~'MENS 9CT YELLOW GOLD RING 3.8GMS STAMPED  
10K MICHAEL HILL 9K YELLOW GOLD RING 3.8  
TESTED';~~

(c) Particulars in respect of the Group Members will be provided  
after the trial of the Applicant's ~~Ms Gatt~~ claim.

7. The Pawn Contracts were in standard written form and contained terms that:
- a. the loan period is one month;
  - b. the interest charge is 40% of the Loan Amount per month or part thereof  
(Interest Charge);
  - c. in order to redeem the Pawned Goods, the Group Member is required to repay  
the Loan Amount and the Interest Charge by the end of the loan period;
  - d. if the Group Member requires more time to redeem the Pawned Goods, the  
Group Member can extend the loan period by paying the Interest Charge, with  
each payment of one month's Interest Charge extending the loan period by a  
further one month; and

- e. if the Group Member does not redeem the Pawns Goods or extend the loan period by the due date for repayment, Taylors can sell the Pawns Goods.
8. In respect of ~~Ms Gatt~~ the Applicant and each Group Member, Taylors provided the Loan Amount to the person ~~the Group Member~~ wholly or predominantly for personal, domestic or household purposes.

#### **Particulars**

The nature of the Respondent's business was one of lending to natural persons who were in financial difficulty and needed short-term credit wholly or predominantly for personal, domestic or household purposes.

Further, the quantum of the Loan Amount in each case is small such that the Loan Amount was provided wholly or predominantly for personal, domestic or household purposes.

Particulars in respect of the Group Members will be provided after the trial of ~~Ms Gatt~~ the Applicant's claim.

#### **B.2. Requirement to be registered in order to carry on business as a pawnbroker**

9. From the period 15 November 2022 to the commencement of this proceeding, Taylors was not registered as a second-hand dealer nor authorised to carry on business as a pawnbroker, because on and from 15 November 2022 it ceased to be registered under Part 2 of the *Second-Hand Dealers and Pawnbrokers Act 1989* (Vic) (**SHDP Act**).

#### **Particulars**

- (a) Until 15 November 2022, the Respondent was registered under Part 2 of the SHDP Act with registration number SHD-0011312.
  - (b) The Respondent's registration was cancelled from 15 November 2022 for reasons not presently known to the Applicant ~~Ms Gatt~~.
10. Under paragraph 5(1A)(b) of the SHDP Act, a person is prohibited from carrying on a business as a pawnbroker unless they are authorised to carry on business as a pawnbroker by endorsement of their registration under Part 2 of the SHDP Act.
11. By reason of the matters pleaded at paragraphs 9 and 10 above, from 15 November 2022 onwards, it was unlawful for Taylors to:
- a. carry on business as a pawnbroker in Victoria;

- b. enter into Pawn Contracts.

### **B.3. The Pawn Contracts are credit contracts**

12. Under each of the Pawn Contracts:

- a. Taylors provided the Loan Amount to ~~Ms Gatt~~ the Applicant and the Group Members;
- b. ~~Ms Gatt~~ the Applicant and the Group Members became liable to repay a debt to Taylors, namely the Loan Amount plus the Interest Charge; and
- c. the payment of that debt was deferred.

13. By reason of the matters in paragraph 12:

- a. the loans provided by Taylors to ~~Ms Gatt~~ the Applicant and the Group Members under the Pawn Contracts are “credit” for the purposes of the *National Consumer Credit Protection Act 2009* (Cth) (**NCCP Act**) and the *National Credit Code* (**Code**);

#### **Particulars**

NCCP Act s 5(1) (definition of “credit”) and Code s 3(1).

- b. ~~Ms Gatt~~ the Applicant and the Group Members are “debtors” for the purposes of the NCCP Act and the Code;

#### **Particulars**

NCCP Act s 5(1) (definition of “debtor”) and Code ss 3(1) and 204(1) (definition of “debtor”).

- c. Taylors is a “credit provider” for the purposes of the NCCP Act and the Code.

#### **Particulars**

NCCP Act s 5(1) (definition of “credit provider”) and Code ss 3(1) and 204(1) (definition of “credit provider”).

14. The Code applies to the provision of credit by Taylors to ~~Ms Gatt~~ the Applicant and the Group Members under the Pawn Contracts because:

- a. ~~Ms Gatt~~ the Applicant and the Group Members are natural persons;

#### **Particulars**

Code s 5(1)(a).

- b. the credit was provided or intended to be provided wholly or predominantly for personal, domestic or household purposes;

**Particulars**

Code s 5(1)(b).

- c. a charge was made for providing the credit, namely the Interest Charge;

**Particulars**

Code 5(1)(c).

- d. Taylors provided the credit in the course of a business of providing credit carried on in Australia.

**Particulars**

Code s 5(1)(d).

- 15. Subsection 6(9) of the Code provides that the Code does not apply to the provision of credit on the security of pawned or pledged goods by a pawnbroker in the ordinary course of the pawnbroker's business, provided that the business is being lawfully conducted by the pawnbroker (**Pawnbroker's Exemption**).

- 16. By entering into the Pawn Contracts with ~~Ms Catt~~ The Applicant and the Group Members after the cancellation of its Second-Hand Dealer and Pawnbroker Registration, Taylors was:

- a. contravening s 5(1A) of the SHDP Act;

**Particulars**

~~Ms Catt~~ The Applicant refers to paragraphs 13-17.

- b. in those circumstances, not conducting its business lawfully for the purposes of the Pawnbroker's Exemption.

- 17. By reason of the matters in paragraphs 12 to 16 above, the Pawn Contracts are "credit contracts" for the purposes of the NCCP Act and the Code.

**B.4. Pawn Contracts are unenforceable**

*B.4.1. Statutory unenforceability*

- 18. The annual percentage rate of each of the Pawn Contracts is, on a simple interest basis, 480%.

### Particulars

The Interest Charge is 40% per month, which is 480% per annum (on a simple interest basis).

19. By reason of the matters in paragraph 18, the Pawn Contracts are unenforceable by force of statute.

### Particulars

~~Ms Gatt~~ The Applicant refers to subsection 39(1) of the *Consumer Credit (Victoria) Act 1995* (Vic) (**CCV Act**),

#### *B.4.II. Unenforceability by reason of excessive rates of interest proscribed by statute*

20. Further, the Pawn Contracts contained terms charging rates of interest that were so high that the Pawn Contracts are and at all times have been void and unenforceable, by reason of them being illegal or contrary to public policy.

### Particulars

By reason of the matters in paragraph 18:

- (a) Taylors was prohibited from entering into the Pawn Contracts, pursuant to subsection 39(3) of the CCV Act;
- (b) Taylors was prohibited from entering into the Pawn Contracts, pursuant to subsection 32A(1) of the Code.

#### *B.4.III. Unenforceability by reason of unlicensed credit activity*

21. Further, Taylors engaged in the following activities, which are “credit activities” within the meaning of the NCCP Act:
- a. being a credit provider under a credit contract, namely the Pawn Contracts;
  - b. carrying on a business of providing credit, being credit to which the provision of which the Code applies to, by entering into Pawn Contracts with ~~Ms Gatt~~ the Applicant and the Group Members;
  - c. performing the obligations, and exercising the rights, of a credit provider in relation to a credit contract by:
    - i. providing credit to ~~Ms Gatt~~ the Applicant and the Group Members under the Pawn Contracts;

- ii. receiving payments made by Group Members pursuant to the Pawn Contracts; and
- iii. holding the Pawned Goods under the Pawn Contracts as security for the repayment of the debts owing under the Pawn Contracts.

### **Particulars**

NCCP Act s 6(1) (item 1).

- 22. Under subsection 29(1) of the NCCP Act, a person must not engage in a credit activity if the person does not hold an Australian Credit Licence authorising the person to engage in the credit activity.
- 23. Taylors did not hold an Australian Credit Licence at the time it engaged in the credit activities set out in paragraph 21.
- 24. By reason of the matters at paragraphs 21 to 23:
  - a. Taylors' entry into the Pawn Contracts was in contravention of subsection 29(1) of the NCCP Act;
  - b. the Pawn Contracts are and at all times have been void and unenforceable by reason of being illegal or contrary to public policy.

### **C. UNJUST TRANSACTION—NATIONAL CREDIT CODE**

- 25. Further or alternatively, at the time of entry into each of the Pawn Contracts:
  - a. ~~Ms Gatt~~ the Applicant and the Group Members did not have any bargaining power over Taylors, nor any ability to negotiate with Taylors, as to the terms of the Pawn Contracts;

### **Particulars**

The Pawn Contracts were in standard written form and offered on a 'take it or leave it' basis.

- b. it was not reasonably necessary for the protection of any legitimate interest of Taylors to charge the Interest Rate of 40% per month;



- c. ~~Ms Catt~~ The Applicant and the Group Members did not obtain, nor were they offered an opportunity to obtain, any independent legal advice about the terms of the Pawn Contracts; and
  - d. the Interest Rate was not justified in light of the credit risk of ~~Ms Catt~~ The Applicant and the Group Members assumed by Taylors.
26. By reason of the matters in paragraph 25 and paragraphs 31 to 35, the Pawn Contracts were unjust within the meaning of section 76 of the Code.

#### **D. UNFAIR TERMS—ASIC ACT**

27. Further or alternatively, each of the Pawn Contracts were consumer contracts, within the meaning of the *Australian Securities and Investments Commission Act 2001* (Cth) (**ASIC Act**).

##### **Particulars**

~~Ms Catt~~ The Applicant refers to the matters in paragraph 8.

28. Each of the Pawn Contracts were standard form contracts, within the meaning of the ASIC Act.
29. The Pawn Contracts were financial products, within the meaning of the ASIC Act.

##### **Particulars**

The Pawn Contracts were financial facilities. ~~Ms Catt~~ The Applicant refers to paragraph 12BAA(7)(k) of the ASIC Act.

30. By reason of the matters in paragraph 25 and paragraphs 31 to 35, the Interest Charge is a term in the Pawn Contracts that:
- a. causes a significant imbalance in the parties' rights and obligations arising under the contract;
  - b. is not reasonably necessary in order to protect the legitimate interests of Taylors;
  - c. would cause financial detriment to ~~Ms Catt~~ The Applicant and the Group Members if it were to be applied or relied on;

- d. in the circumstances in the subparagraphs above, is unfair, within the meaning of section 12BG of the ASIC Act.

**E. UNCONSCIONABLE CONDUCT—ASIC ACT**

31. Further or alternatively, at the time of entry into each of the Pawn Contracts:

- a. Taylors was engaged in trade or commerce;
- b. the prospective entry into any of the Pawn Contracts was the possible supply by Taylors of financial services to ~~Ms Catt~~ the Applicant and the Group Members.

32. In addition to the matters in paragraph 25, at the time of entry into each of the Pawn Contracts:

- a. ~~Ms Catt~~ the Applicant and the Group Members were commonly:
  - i. vulnerable consumers; and
  - ii. unsophisticated consumers of loan contracts;
  - iii. low-income earners;
  - iv. experiencing financial hardship and needed money to pay for their living expenses;
  - v. in pawning goods for the Pawn Contracts, pawned goods that were of sentimental value;
- b. Taylors was carrying on the business of a second-hand dealer and pawnbroker whilst unregistered.

33. Further, the Taylors Store closed its premises in about July 2023.

34. It was a term of each of the Pawn Contracts that ~~Ms Catt~~ the Applicant and the Group Members could extend their contracts by paying the monthly Interest Charge, which was able to be paid in person at the Taylors Store.

35. Taylors took no or no adequate steps to inform ~~Ms Catt~~ the Applicant and Group Members that at the time of entry into each of the Pawn Contracts, the Taylors Store was to close.
36. By reason of the matters in paragraphs 31 to 35, the offering of the Pawnbroking Contracts was unconscionable conduct, in contravention of section 12CB of the ASIC Act.

#### **F. LOSS AND DAMAGE**

37. By reason of the matters pleaded at paragraphs 19, 20, 24, 26, 30 and/or 36, the Applicant ~~Ms Catt~~ and the Group Members have suffered loss and damage in the form of:
- a. the amounts paid in respect of the ~~Interest Charge for the initial loan period and any extensions of the loan period under~~ the Pawn Contracts;
  - b. the value of the Pawns Goods ~~in relation~~ of the Pawn Contracts; and
  - c. the loss of enjoyment and use of the Pawns Goods of the Pawn Contracts over the period of possession by Taylors.

#### **G. ABANDONMENT OF GOODS**

38. At some date prior to 15 December 2024 not otherwise presently known to the Applicant, Taylors was served with a notice by its landlord for breach of the lease of the Taylors Store due to non-payment of rent.
39. The notice required Taylors to remedy the breach of the lease by 17 December 2024.
40. On around 15 December 2024, Taylors:
- a. removed its property from the Taylors Store;
  - b. left behind the Pawns Goods;

- c. otherwise vacated the Taylors Store; and
  - d. abandoned its lease for the Taylors Store.
41. By reason of the matters in paragraphs 38-40 above, Taylors abandoned its possession of the Pawned Goods.
42. The title of the Pawned Goods has never passed from their owners, being the Applicant and the Group Members, to Taylors.

**Particulars**

At common law, title does not pass in a pawnbroking arrangement. The Pawned Goods were the subject of pawnbroking arrangements.

43. By reason of the matters in paragraphs 41 to 42, the persons entitled to possession of the Pawned Goods are their rightful owners, namely, the Applicant and the Group Members.

Date: 22 May 2025 ~~14 February 2025~~ ~~25 October~~ ~~15 December 2023~~

*Consumer Action Law Centre*

Signed by Consumer Action Law Centre  
Lawyers for the Applicant ~~Ms Gatt~~

This pleading was prepared by Galit Aflalo, Lawyer, and settled by Min Guo and Philippa Kelly of counsel.

### **Certificate of lawyer**

I, Nhirushni Somasandaram Galit Aflale, certify to the Court that, in relation to the statement of claim filed on behalf of the Applicant, the factual and legal material available to me at present provides a proper basis for each allegation in the pleading.

Date: 22 May 2025 ~~14 February 2025~~ ~~25 October 2023~~



Signed by Nhirushni Somasandaram Galit  
Aflale  
Lawyer for the Applicant Ms Gatt